

# **Exhibit A**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

PROTECT OUR PARKS, INC.,                     ) Docket No. 18 CV 3424  
et al.,   )  
   )  
   Plaintiffs,                     )  
   )  
   vs.                                 ) Chicago, Illinois  
   ) November 29, 2018  
   ) 9:45 o'clock a.m.  
CHICAGO PARK DISTRICT and CITY             )  
OF CHICAGO,                                     )  
   )  
   Defendants.                     )

TRANSCRIPT OF PROCEEDINGS - Motion  
BEFORE THE HONORABLE JOHN ROBERT BLAKEY

APPEARANCES:

For the Plaintiffs:                     ROTH FIORETTI LLC  
   BY: MR. ROBERT FIORETTI  
   311 South Wacker Drive  
   Suite 2470  
   Chicago, Illinois 60606  
  
For Chicago Park District:                 BURKE WARREN MacKAY & SERRITELLA PC  
   BY: MR. JOSEPH P. RODDY  
   330 North Wabash Avenue  
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   Chicago, Illinois 60611  
  
For City of Chicago:                     CITY OF CHICAGO, DEPARTMENT OF LAW  
   BY: MR. ANDREW W. WORSECK  
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1 (The following proceedings were had in open court:)

2 COURTROOM DEPUTY: 18 C 3424, Protect Our Parks, et  
3 al., versus Chicago Park District.

4 MR. ROTH: Good morning, your Honor. My name is  
5 Mark Roth. I represent the plaintiffs.

6 MR. WORSECK: Good morning, your Honor. Andrew  
7 Worseck for the City.

8 MR. RODDY: Good morning, Judge. Joe Roddy on  
9 behalf of the Chicago Park District.

10 THE COURT: We've got a couple things up today.  
11 Counsel, have you seen the motion to dismiss?

12 MR. ROTH: I have, your Honor. Yes.

13 THE COURT: Okay. Do you want to amend your  
14 complaint or file a response?

15 MR. ROTH: No. We're going to file a response, your  
16 Honor.

17 THE COURT: Okay. How long do you need to do that?

18 MR. ROTH: Well, it ties a little bit in with the  
19 motion to stay discovery so if I can address those at the  
20 same time, I would appreciate that.

21 THE COURT: Sure.

22 MR. ROTH: So the defendants have filed a motion to  
23 dismiss and a motion for judgment on the pleadings. Attached  
24 to the motion for judgment on the pleadings are various  
25 documents that they're asking the Court to take judicial

1 notice of. We had sent out requests to produce and  
2 interrogatories earlier on in the case and, in fact, those  
3 requests to produce interrogatories are now overdue. They've  
4 never produced any documents whatsoever, never objected,  
5 never responded to the requests to produce at all so what I'm  
6 asking is that I respond that they produce those documents  
7 and answer the interrogatories within seven days and then I  
8 be given 35 days thereafter to January 11th to file our  
9 response to the motion to dismiss and a motion for judgment  
10 on the pleadings.

11 THE COURT: Exactly which portions of the discovery  
12 do you think relate to the issues raised in the defendant's  
13 motions?

14 MR. ROTH: Well, for example, your Honor, in the  
15 motion to dismiss, the City and the Park District take the  
16 position that there are 11 other museums within parks and --

17 THE COURT: Counsel, do you want to make your  
18 appearance?

19 MR. FIORETTI: Good morning, your Honor. Sorry.  
20 Bob Fioretti on behalf of the plaintiffs.

21 THE COURT: Okay. Go ahead, counsel.

22 MR. ROTH: So just as one example, your Honor, the  
23 City and the Park District are basing their motion at least  
24 in large part on the fact that they're saying that there are  
25 11 other museums and parks. Putting aside the fact that this

1 is much more than a museum, we had asked for all the lease  
2 agreements or use agreements for those museums and in  
3 response they never objected, they never responded, they  
4 never produced them.

5           Now in their motion for judgment on the pleadings,  
6 they're saying, your Honor, please take a look at just three  
7 of those use agreements and based on three of those use  
8 agreements grant our motion for judgment on the pleadings and  
9 they're not even giving us the other eight agreements. So  
10 what they're doing is they're using this motion to stay  
11 discovery as really a sword, not as a shield, so they're  
12 withholding these documents that we have no access to. And  
13 then, on the other hand, they're saying, well, just consider  
14 these select documents that we want the Court to see and  
15 we've already asked for these other documents. That's one --  
16 just one example.

17           Obviously, my request to produce, they were tailored  
18 to the complaint, your Honor, so I'm not going far afield but  
19 that's an example of one thing that they're absolutely basing  
20 their motion on but yet they're denying us discovery on the  
21 other hand so that's what we're looking for. And it's -- you  
22 know, they've already had -- they brought the motion to  
23 stay after -- we're here today after the discovery responses  
24 are due. The first discovery response was due last Tuesday  
25 and the supplemental requests for production that asks for

1 all the museum use agreements, leases, et cetera, was due  
2 yesterday and they've never even bothered to respond those,  
3 your Honor.

4 THE COURT: All right. Other than the lease and use  
5 agreements, what other specific discovery are you requesting  
6 in order to file a response?

7 MR. ROTH: Well, we've asked for study and analysis  
8 on the public benefits to the Obama Center, which we've never  
9 received, and there -- and the reason that that's relevant is  
10 they're asking the Court to take judicial notice  
11 apparently -- which I think is improper but that we'll  
12 address that in our response -- that this Obama Center is  
13 going to confer a benefit on the public. They have analysis  
14 and studies that they've done that show what the detriments  
15 and benefits are and they're refusing to produce those as  
16 well.

17 THE COURT: What else?

18 MR. ROTH: That's it, your Honor.

19 THE COURT: Just those two items?

20 MR. ROTH: Yes, your Honor.

21 THE COURT: Okay. Go ahead, counsel.

22 MR. WORSECK: Thank you, your Honor. First of all,  
23 just to clear up some underbrush regarding the timing of  
24 discovery responses and our communications to plaintiffs, by  
25 our calculation, the initial set of discovery that the

1 plaintiff serves, the response date for that was the Friday  
2 after Thanksgiving. We notified plaintiffs in writing, sent  
3 them an email saying in light of our pending motion to stay  
4 discovery, we believe that we have an appropriate basis, a  
5 good faith basis for declining to respond to those requests  
6 at that time.

7           The second set of discovery that they issued, which  
8 was tailored to the museum agreements for the other 11  
9 museums, that's due today so that response is not even late.  
10 We would intend to take the same position with respect to  
11 that as we've taken with respect to the first set in that all  
12 of the discovery should be stayed in light of our dispositive  
13 motion but counsel's representations of the discovery  
14 schedule and the history is just not fair.

15           Counsel mentioned two categories of documents that  
16 he thinks he needs in order to respond to the dispositive  
17 motion. The museum agreements are -- we did cite three of  
18 those in our motion. It was not a core argument or a core  
19 feature of our motion. We could have a consultation with  
20 plaintiff about whether we would be amenable to producing the  
21 other eight, I guess, museum agreements. The other category  
22 of documents that he mentioned, a study of the public  
23 benefits resulting from the OPC, that is just not a relevant  
24 sort of document under the governing law that applies to the  
25 public trust claim in this case.

1           The Illinois Supreme Court's guidance on that issue,  
2       which would be dispositive here, is that the public trust  
3       question can be and should be determined based solely on  
4       looking at the terms of the governing ordinances and the  
5       governing contract between the City and the Foundation which  
6       we have produced which are matters of public record and which  
7       provide the full contours of the inquiry.

8           THE COURT: Is it your position that you would  
9       withdraw any argument you have that is based on the other  
10      lease agreements or any studies or any factual issue  
11      regarding public benefit or are you going to continue to rely  
12      on those arguments albeit in addition to other arguments in  
13      your motion?

14          MR. WORSECK: We would certainly maintain the  
15      arguments that the Obama Presidential Center will provide  
16      public benefits and that those public benefits can be  
17      assessed and determined based on the face of the official  
18      governing documents. That is something that would be  
19      potentially relevant to the Court's analysis depending on  
20      which line of analysis it would choose to follow. We've made  
21      the argument that the Museum Act standing by itself is enough  
22      to decide that issue. But if the Court were to disagree with  
23      that argument and feel the need to start to look at  
24      additional factors in the way that the Friends of the Park  
25      Decision did, then it would become relevant at that point to



1 look at the terms of the governing documents to assess the  
2 public benefits, but only the terms of those governing  
3 documents and nothing else.

4           There was -- in the Friends of the Park case, there  
5 was the attempt to proffer expert testimony contradicting the  
6 asserted public benefits of the Soldier Field renovations and  
7 that was rejected as being irrelevant.

8           THE COURT: When a Court considers a motion to  
9 dismiss, one of the things the Court has to consider is  
10 whether or not a dismissal is with or without prejudice and  
11 there's a variety of factors that go into that analysis.  
12 Some of the things I have to look at is the opportunity to  
13 amend. They've chosen not to do that so that's no longer an  
14 issue. The other opportunity is whether or not they've had  
15 access to discovery.

16           So as part of the analysis in looking at your  
17 motion, one of the things I want to at least assess on the  
18 front end is whether or not you have any proportionality or  
19 privilege arguments with respect to -- not relevance but  
20 those issues with respect to the two pieces of discovery that  
21 the plaintiffs have identified as being important to them  
22 properly responding to your motion.

23           So do you have the other eight agreements? Are  
24 there, in fact, some studies or analysis? Do you have those  
25 and what are the proportionality and burden issues or any

1 other privilege or any other issue I would need to address in  
2 whether or not to grant or deny that discovery at this point?

3 MR. WORSECK: With respect to the other eight museum  
4 agreements, we have what we think are the universe of those.  
5 That would not be a burdensome thing to produce.

6 THE COURT: Okay. What about the other part?

7 MR. WORSECK: With respect to the studies, I don't  
8 know the answer to that as I stand here what that universe  
9 might look like. Again, we just think it's categorically  
10 irrelevant under the governing law that would govern the  
11 case.

12 THE COURT: But you don't otherwise have a -- at  
13 least as you stand here today have a specific proportionality  
14 argument or a privilege argument, right?

15 MR. WORSECK: I would ask for the opportunity to  
16 make a refined assessment of that if the Court would like.

17 THE COURT: Well, they've asked for it previously  
18 and you're here on a motion to stay so now is the time to  
19 address it. Do you know if you have any proportionality  
20 arguments or privilege arguments with respect to those  
21 documents?

22 MR. WORSECK: We may have both, your Honor. I -- I  
23 apologize I can't give more detail.

24 THE COURT: Okay.

25 MR. WORSECK: I know you would like it but --

1 THE COURT: Okay.

2 MR. WORSECK: -- in light of our stay motion, which  
3 took the categorical position that no discovery is necessary,  
4 we haven't gotten into the fine tuning.

5 THE COURT: Okay. Anything else, counsel? Do you  
6 need to respond to any of that?

7 MR. ROTH: No, your Honor. It is relevant and -- I  
8 mean, they've -- first of all, I think they've admitted on  
9 the museum agreements that they -- well, they're claiming  
10 they exist and they're not producing them. I think that's a  
11 very easy decision to order those produced.

12 With respect to the documents regarding the public  
13 benefit and such, you know, they've never responded to the  
14 request to produce. They've really waived that objections to  
15 those requests and now they're coming in and they're saying,  
16 well, we don't know if we're going to object or we're not  
17 going to object and that's -- again, that would be fine if we  
18 had an unlimited time frame for this case but I know that the  
19 Court has already said that you want to reign this thing in  
20 and set a relatively quick date so we really need to have an  
21 answer to that. We really believe it is relevant and they've  
22 raised it. That's a central issue in their public trust  
23 doctrine argument.

24 THE COURT: Okay. Anything else?

25 MR. WORSECK: I would just say this is something we

1 argued in our dispositive motion; but if you just look at  
2 this whole sort of pantheon of public trust cases, none of  
3 them get into the weeds in terms of what the public benefits  
4 of a project are. They arise from situations where the  
5 legislature and/or a local government made a legislative  
6 determination that a particular project was in the public  
7 interest and the Court sometimes look at the face of those  
8 documents to see whether that's facially sensible but they  
9 don't go beyond that to start looking at studies or taking  
10 expert testimony or anything like that as to whether, in  
11 fact, the public benefits are going to be exactly as  
12 contemplated by the legislature.

13 THE COURT: Okay. A couple housekeeping matters.  
14 The motion for leave to file excess pages, Docket Entry 49,  
15 Gloria, that's going to be granted.

16 Did the parties have an opportunity to see the  
17 motion that was recently filed, Docket Entry 61, regarding  
18 the amicus brief?

19 MR. ROTH: Well, I saw --

20 THE COURT: It came in late last -- I don't know  
21 what time it came in. I looked at it around 8:00 p.m. last  
22 night so I don't know what time it came in.

23 MR. ROTH: My email was pinging last night until  
24 about 9:00 o'clock so I saw that there were motions filed.  
25 Quite honestly, I haven't downloaded those but I saw that

1 there were three. I believe there's three motions that are  
2 filed, filed amicus briefs that are up next -- on  
3 December 6th, so next week. I mean, I guess what I would do  
4 is we'll file a response to that or not before December 6th,  
5 your Honor.

6 THE COURT: Well, I want to handle it now. I don't  
7 want to string this stuff out. This case is going to move  
8 efficiently and fairly. What is your argument against the  
9 amicus briefs --

10 MR. ROTH: Your Honor, I haven't even --

11 THE COURT: -- because the decision to whether to  
12 grant them is really -- I think the words of the Seventh  
13 Circuit were it's a matter of judicial grace, so.

14 MR. ROTH: Understood, your Honor, but quite  
15 honestly I haven't opened them so I don't know -- I don't  
16 know what they say. One came in at 9:00 o'clock last night  
17 and this morning I was preparing for hearing today so I  
18 haven't even looked at those briefs.

19 THE COURT: Well, assuming worst-case scenario that  
20 they're incredibly well written and have everything in the  
21 world that you fear would be in a motion, can you still get  
22 your response in by January 11th because that's already a  
23 longer date than I would normally give in terms of a response  
24 to the motion to stay.

25 MR. ROTH: Yes, your Honor.

1 THE COURT: You can?

2 MR. ROTH: Yeah.

3 THE COURT: Okay. All right. Do you want me to  
4 leave on the December 6th date because my inclination would  
5 be to simply grant it, let you look at it, you can respond to  
6 it and then I strike the date, save everybody a little money  
7 on attorneys at that point and then you respond to it. And  
8 if it's a great brief, you're going to have a great response.  
9 And if it's not, then it doesn't really matter.

10 MR. ROTH: Yes, your Honor. I'm fine with that.

11 THE COURT: All right. So the motions for amicus  
12 briefs are going to be granted. We're going to strike the  
13 December 6th notice. We're also set for a case management  
14 date on 12-5. In light of the briefing, I don't think  
15 that that -- that might be premature so is there any  
16 objection to striking that date?

17 MR. ROTH: Yes. We agree, your Honor.

18 THE COURT: Okay. All right. If they file a  
19 response, counsel, on January 11th, how long do you need for  
20 a reply?

21 MR. WORSECK: 21 days, your Honor.

22 THE COURT: You need that long, really? Okay. All  
23 right.

24 MR. WORSECK: We can certainly file it sooner.

25 THE COURT: That's fine. Gloria, give me a 21-day

1 response -- excuse me, reply date to the response which is  
2 going to be on January 11th.

3 COURTROOM DEPUTY: Friday, February 1st.

4 THE COURT: And then two weeks for a hearing and a  
5 ruling.

6 COURTROOM DEPUTY: Thursday, February 14th at  
7 9:45.

8 THE COURT: Is that good for everybody?

9 MR. WORSECK: Yes, your Honor.

10 MR. RODDY: Yes, Judge.

11 MR. ROTH: Yes.

12 THE COURT: All right. Anything else I need to  
13 address other than the motion to stay?

14 MR. ROTH: No, your Honor.

15 THE COURT: All right. The motion to stay with  
16 respect is going to be denied. I'm going to order production  
17 of the eight other agreements and the studies analysis, if  
18 you have them. If there's any privilege or issues, then  
19 you're going to have to make a privilege log and meet and  
20 confer with the other side. Otherwise, I'll expect that they  
21 be turned over and the deadline for that will be seven days  
22 from today. What's that date, Gloria?

23 COURTROOM DEPUTY: December 6th.

24 THE COURT: Okay. Anything else we need to address,  
25 counsel?

1 MR. ROTH: No, your Honor.

2 MR. WORSECK: Your Honor, just to --

3 THE COURT: Yep?

4 MR. WORSECK: -- clarify. With respect to the  
5 productions that you've just ordered, we would maintain as  
6 you were asking proportionality and burdensomeness and  
7 privilege objections and the kind of the full menu of  
8 objections.

9 THE COURT: Well, the -- you indicated there were  
10 none as to the eight.

11 MR. WORSECK: True; yes.

12 THE COURT: And as to the other ones, you don't have  
13 a factual basis to do that because you don't know what's  
14 involved so those objections are not preserved.

15 MR. WORSECK: But if --

16 THE COURT: If you look at it --

17 MR. WORSECK: -- upon reviewing the documents at  
18 that time, we would have a good faith basis for that  
19 position.

20 THE COURT: Yeah. It better be really -- I don't  
21 expect that you're not going to comply with the seven so if  
22 you have an issue with it, you're going to need to file a  
23 motion and notice it up before that due date is due. I don't  
24 want this discovery to delay the briefing schedule that's  
25 already longer than I would normally set. Okay?



1 MR. WORSECK: Understood.

2 THE COURT: Okay. Great. Have a great holiday.

3 MR. FIORETTI: Thank you, your Honor.

4 MR. ROTH: Thank you, your Honor.

5 MR. RODDY: Thank you.

6 MR. WORSECK: Thank you.

7 (Which concluded the proceedings in the above-entitled  
8 matter.)

9 C E R T I F I C A T E

10 I hereby certify that the foregoing is a transcript  
11 of proceedings before the Honorable John Robert Blakey on  
12 November 29, 2018.

13

14 **/s/Laura LaCien**

15 \_\_\_\_\_  
16 Laura LaCien  
17 Official Court Reporter

November 30, 2018  
Date

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